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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
★ AUG 30 2000 ★

JOSE MARTINEZ,

Plaintiff,

PM. _____
TIME AM. _____
CV-99-1735 (ARR) (VVP)

-against-

**STIPULATION OF
SETTLEMENT AND
ORDER OF DISMISSAL**

LOYCE DUKES,

Defendant.

-----X

WHEREAS, plaintiff, Jose Martinez ("Martinez"), filed a complaint dated March 15, 1999 ("complaint"), alleging that the defendants Frank R. Headley, Loyce Dukes, Nancy Wien and the New York State Department of Correctional Services (collectively "defendants"), had violated Martinez's rights during his incarceration at the Arthur Kill and Sing Sing Correctional facilities of the New York State Correctional Services system; and

WHEREAS, the defendants answered the complaint and denied all allegations that their conduct violated Martinez's constitutional or other rights; and

WHEREAS, the parties are interested in resolving the issues alleged in the complaint in the above-captioned action ("Action"), and have negotiated in good faith for that purpose; and

WHEREAS, none of the parties to the Action is an infant or incompetent person; and

WHEREAS, the parties to the Action are desirous of

discontinuing this litigation without the need for trial and without admitting any wrongdoing on the part of defendants;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties and/or their respective counsel as follows:

1. The parties hereby agree that the Action is dismissed and discontinued with prejudice.

2. Defendants shall pay to Martinez the sum of \$10,000.00, in full satisfaction of any and all claims for relief in this Action, and shall pay to Martinez's attorneys, Mayer, Brown, Rowe & Maw LLP, the sum of \$10,000.00 in full satisfaction of any claims in this Action for attorneys fees, costs and disbursements.

3. Payment shall be made in two checks.

A) The first check, in the amount of \$10,000.00, shall be made payable to Martinez and shall be delivered to the correctional facility in which plaintiff is incarcerated, for deposit in his inmate facility/departmental account. Defendants, by their undersigned counsel, shall provide notice of the deposit and a photocopy of the check to Martinez's counsel within five business days of the check being deposited in Martinez's inmate facility/departmental account. Martinez expressly disclaims and waives any interest on the \$10,000.00 owed to him as a result of the terms of this agreement.

B) The second check, in the amount of \$10,000.00 shall

be drawn to the order of Martinez's attorneys and mailed to the attention of Claudius O. Sokenu, Esq., at Mayer, Brown, Rowe & Maw LLP, at 1675 Broadway, New York, New York 10019-5820.

4. In consideration of the payment of the sums referenced in paragraph #2 above, the plaintiff, Jose Martinez, hereby releases and discharges each of the defendants and any and all current or former employees or agents of New York State or the New York State Department of Correctional Services, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without limitation, the New York State Department of Correctional Services, from any and all claims, liabilities and causes of action asserted in, or which could have been asserted in this Action, or which relate to or arise out of this Action or any of the incidents alleged in the complaint herein.

5. Nothing in this Stipulation of Settlement shall be construed as an admission or acknowledgment of liability whatsoever by any of the defendants or the New York State Department of Correctional Services regarding any of the allegations made by Martinez in his complaint.

6. Payment of the amounts recited in paragraph #2 above is subject to the approval of all appropriate New York State

officials in accordance with the provisions for indemnification under Section 17 of the New York Public Officers Law. Except for the payment to be made to Martinez's attorney in satisfaction of any claims for attorney's fees, costs and disbursements, payments by defendants hereunder are subject to the provisions of New York Executive Law § 632-a.

7. Subject to the provisions of the foregoing paragraphs, payment of the amounts recited in paragraph #2 above will be made within one hundred and twenty (120) days after the receipt by defendant's counsel, from plaintiff, of a copy of the fully executed So-ordered Stipulation of Settlement as entered by the Court. No interest shall accrue on the \$10,000.00 owed to Martinez.

8. This Stipulation of Settlement and any Order entered thereon shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Stipulation of Settlement.

9. This Stipulation of Settlement and Order of Dismissal embodies the entire agreement of the parties in this matter and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceedings, shall be deemed

to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

New York, New York
August 1, 2005

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Defendants
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Mark D. Rosenzweig
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New York, New York
August , 2005

Mayer, Brown, Rowe & Maw LLP
Attorney for Plaintiff

By: Claudius O. Sokenu
(CS-)
1675 Broadway
New York, New York 10019
(212) 506-2629

Malone, New York
August 17, 2005

Jose Martinez
Jose Martinez

Sworn to before me
this 17 day of Aug 2005

Sherry L. Leclair
Notary Public

SHERRY L. LECLAIR
Notary Public, State of New York
No. 4958033
Qualified in Franklin County
Commission Expires 10-30-05

Dated: New York, New York
 , 2005

SO ORDERED:

Honorable Aileen R. Ross

U.S.D.J.

to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

New York, New York
August 1, 2005

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Defendants
By: Mark D. Rosenzweig
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New York, New York
August 24, 2005

Mayer, Brown, Rowe & Maw LLP
Attorney for Plaintiff
By: Hector Gonzalez
Hector Gonzalez
(HG - 3821)
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(CS -)
1675 Broadway
New York, New York 10019
(212) 506-2629

Malone, New York
August 17, 2005

Jose Martinez
Jose Martinez

Sworn to before me
this 17 day of Aug 2005

Sherry Lella
Notary Public

SHERRY L. LECLAIR
Notary Public, State of New York
No. 4958033
Qualified in Franklin County
Commission Expires 10-30-05

Dated: New York, New York
 , 2005

SO ORDERED

Aileen R. Ross
Honorable Aileen R. Ross

U.S.D.J.

8/29/05